

BEFORE THE
BOARD OF PSYCHOLOGY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of)	Case No. X45
Issues Against:)	OAH No. L-2002010667
)	
WAYNE C. KELLEY)	
4421 W. 60 th Street)	
Los Angeles, CA)	
)	
ADDRESS OF RECORD:)	
3870 Crenshaw Blvd., Ste. 215)	
Los Angeles, CA 90008,)	
)	
<u>Respondent.</u>)	

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Psychology as its Decision in the above-entitled matter.

This Decision shall become effective November 21, 2002.

IT IS SO ORDERED October 22, 2002.

BOARD OF PSYCHOLOGY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By P Harmell, PhD
Pamela Harmell, Ph.D., President

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In the Matter of the Statement of Issues
Against:

WAYNE C. KELLEY
4421 W. 60th Street
Los Angeles, CA

ADDRESS OF RECORD:
3870 Crenshaw Blvd., Ste. 215
Los Angeles, CA 90008,

Applicant/Respondent.

OAH NO. L-2002010667

CASE NO. X45

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge ("ALJ"), Los Angeles Office of Administrative Hearings, at Los Angeles, California on September 3, 2002.

Deputy Attorney General John E. DeCure represented complainant.

Applicant/Respondent, Wayne C. Kelley, personally appeared and was represented by Charles G. Cohan, Esq.

Oral and documentary evidence was received and the matter was submitted.

FACTUAL FINDINGS

The ALJ makes the following Factual Findings:

1. Complainant, Thomas S. O'Connor, brought and filed the Statement of Issues in his official capacity as the Executive Officer of the Board of Psychology, Department of Consumer Affairs, State of California ("the board").

2. On December 4, 2000, respondent filed an application with the board for licensure as a Psychological Assistant. Respondent had previously been registered as a Psychological Assistant from 1991 until January 31, 1999. He held no valid

registration from January 31, 1999 until this application resulted in the erroneous issuance of Registration number PSB 28448 on February 23, 2001. That registration was cancelled on May 29, 2001 when complainant discovered that at the time of respondent's application respondent was the subject of an active investigation by the board for unlicensed practice of psychology; an investigation that ultimately resulted in respondent's criminal conviction set forth in Finding 4.

3. On May 15, 2001, complainant notified respondent that his application had been denied based on Business and Professions Code sections 480, subdivision (a), subsection (1) (Conviction of a crime substantially related to the qualifications, functions or duties of a licensee), 480, subdivision (a), subsection (3) (Commission of an act, which if done by a licensee would be grounds for suspension or revocation of his/her license), and 2903 (Unlicensed practice of psychology.)

4. On December 5, 2000, in the Municipal Court of Inglewood Judicial District, Los Angeles County, in Case No. 01W03211, entitled *People v. Wayne Courtney Kelley*, respondent was convicted, after entry of a *nolo contendere* plea, of one count of violating California Business and Professions Code section 2902(c) (Unlawfully Acting as a Psychologist).

5. The facts and circumstances underlying respondent's December 5, 2000 conviction are as follows: On March 26, 1999, a board investigator called a telephone number she was given for "Kelley and Associates". The answering machine at "Kelley and Associates" answered with a message that indicated the business was Kelley and Associates and that "Dr. Kelley is in session". The investigator was also given an emergency number for Dr. Kelley via the recorded message.

On April 1, 1999, the investigator again called Kelley and Associates. Respondent answered the phone and identified himself as "Dr. Kelley." The investigator asked to make an appointment for "counseling" and respondent switched the call to a support person. The investigator told the support person she would call back for an appointment once her insurance began covering her for counseling services.

On May 4, 1999, the investigator again called Kelley and Associates, spoke with a support person and set up an appointment for counseling with "Dr. Kelley."

On May 11, 1999, the investigator, posing as a patient, kept her appointment with respondent. After about a one-hour wait respondent entered the waiting room and invited the investigator into his office. After the investigator was seated in the office she asked respondent who he was. Respondent stated: "Dr. Wayne Kelley. I'm the psychologist here." The investigator then began her counseling

session with respondent. The investigator told respondent her mother had congestive heart failure but continued smoking. The investigator told respondent she was afraid her mother was getting worse and would die and asked respondent how she should deal with her feelings. Respondent told the investigator that her repressed feelings that her mom was going to die were causing the investigator to experience depression, anger and fear. Respondent advised the investigator that there was no "quick fix". The investigator also told respondent a story about her sister sleeping with her boyfriend. Respondent agreed to work with the investigator for the next three weeks. He also told the investigator that "As a psychologist, my ethical [obligation] is to be able to help you move from point A to point B, to come to a resolution." Respondent gave the investigator a business card that identified respondent as a "Registered Psychologist" and told the investigator he wanted to see her again in one week. The investigator made an appointment for May 18, 1999, however, she did not keep that appointment.

The facts and circumstances underlying respondent's conviction, and the nature of the conviction, reveal that respondent's conviction is for a crime directly and substantially related to the qualifications, functions and duties of a psychological assistant.

6. As a result of his conviction, respondent was placed on three years summary probation on certain terms and conditions; including, repaying the Department of Consumer Affairs its full investigation costs.

7. No evidence was presented in support of the allegations contained in paragraph 11, subparagraphs a and b concerning acts of misrepresentation allegedly committed by respondent in 1996. Accordingly, the allegations contained in those subparagraphs do not support denial of respondent's application.

8. Complainant's allegation that respondent engaged in acts of dishonesty by failing to disclose his conviction in his application and by failing to correct his application later is without merit. Respondent submitted his application on December 4, 2000. He did not plead *nolo* in the criminal case, and was not "convicted" of any criminal offense as a result of the *nolo* plea until December 5, 2000. Consequently, at the time respondent submitted his application he had not "ever been convicted of or pled guilty or *nolo* contendere to any violation of any federal or state statute, or any city or county ordinance or any law of a foreign country". Accordingly, respondent's negative response to question 5 of the application, asking for disclosure of any pleas or convictions, was truthful and accurate. Furthermore, no law, rule, regulation, or even the application itself, requires an applicant, such as respondent, to notify complainant or the board of a pending criminal matter or conviction that is suffered

subsequent to submission of the application¹. Thus, the fact respondent "answered question 5 regarding conviction of a crime, in the negative" and the fact he "failed to correct his application to reflect his December 5, 2000 conviction", do not form the basis for denial of his application.

9. Respondent personally testified, and presented two letters, in support of his claims of remorse, mitigation and rehabilitation. The ALJ, however, was unimpressed; mainly due to respondent's own testimony. Respondent testified concerning his charitable work and concerning the hardships he was enduring at the time of the incident(s) which form(s) the basis for this Statement of Issues; namely, his unlawfully acting in the capacity of a psychologist. Respondent testified that he was experiencing a messy divorce and that he was just not thinking clearly. If this is true, then respondent should not have been practicing psychology even if he were properly licensed, which, of course he was not. Respondent further testified that he believed his psychological assistant license was active, therefore, valid until just before he submitted his application for re-licensure at the end of the year in 2000 (December 4, 2000.)

Surely, respondent knew he had to renew his license at the end of 1998. He had been renewing it since his initial licensure in 1991. His testimony that it did not occur to him that he had not renewed his license until December 2000, two years after his renewal was due, is not credible.

Respondent's testimony that he knew he was wrong by holding himself out as a psychologist; then, in the same breath saying he does not believe he hurt anyone seems contradictory. Respondent fails to appreciate the fact that what he did was wrong because he violated laws designed to protect the public from harm they could suffer at the hands of an unlicensed person; a person, like respondent, who has not been properly trained to ensure they do no harm.

These observations, in conjunction with the fact that respondent has not yet completed his criminal probation, lead the ALJ to find insufficient evidence of mitigation, remorse, and/or rehabilitation.

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¹ For example, in applications submitted by registered nursing applicants, directly above the certification is a paragraph, which states:

"I understand that I am required to report immediately to the California Board any convictions ... which occur between the date of this application and the date that a California license is issued. Failure to do so constitutes falsification of application for licensure."

LEGAL CONCLUSIONS

The Administrative Law Judge makes the following Legal Conclusions:

1. Cause exists for denial of respondent's application pursuant to Business and Professions Code ("Code") sections 475(a)(2), 480(a)(1), 493, 2960, subdivision (a), and 2963, based on respondent's conviction of a crime substantially related to the qualifications, functions and duties of a licentiate. (Findings 4 and 5.)

2. Cause does not exist for denial of respondent's application pursuant to Code sections 2960, subdivision (n), 475, subdivision (a)(2), and 480, subdivision (a)(2) based on the allegations that respondent submitted a false application and failed to correct it later, because, as set forth in Finding 8, at the time of the application respondent answered question 5 truthfully, and he had no legal obligation to notify the board of his subsequent criminal conviction.

3. Pursuant to Code section 482, the ALJ considered evidence of rehabilitation. The burden is on respondent to prove he is fully rehabilitated. Unfortunately, respondent did not present sufficient evidence to prove that he is completely rehabilitated, and that his licensure as a Psychological Assistant will not be adverse to the interests of the public. When, as in the present instance, an applicant, such as respondent, has not completed his criminal probation (See Finding 9), this ALJ requires substantial evidence of rehabilitation; evidence from which this ALJ can conclude that licensure will not be adverse to the public health, safety, and welfare. In this case respondent has failed to provide such evidence and has failed to meet his burden to prove by a preponderance of the evidence that he is entitled to licensure notwithstanding complainant's denial of his application.

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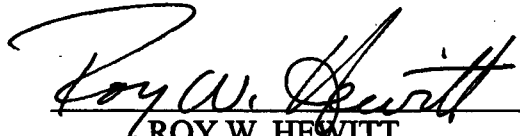
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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Complainant's denial of Applicant's/Respondent's application for licensure as a Psychological Assistant is upheld, and respondent's application is denied.

Dated: September 9, 2002.



ROY W. HEWITT

Administrative Law Judge
Office of Administrative Hearings